

IN THE CHANCERY COURT OF HICKMAN COUNTY, TENNESSEE

KEVIN P. LAVENDER, In his official )  
capacity as Commissioner-In- )  
Possession of Sentinel Trust Company )  
and Receivership Management, Inc., )  
Receiver of Sentinel Trust Company, )  
Plaintiffs, ) No. 4980  
v. )  
DANNY N. BATES, et al., )  
Defendants. )

**PLAINTIFFS' MOTION FOR EXPEDITED CONSIDERATION AND ISSUANCE  
OF AN ORDER GIVING COMMISSIONER-IN-POSSESSION IMMEDIATE  
POSSESSION AND CONTROL OVER 205 BASTIN ROAD PROPERTY**

**I. Request for Expedited Consideration of Motion for Immediate Possession**

Danny N. Bates and Deanna June Bates have moved from and no longer reside at the 205 Bastin Road address in Lewis County, Tennessee. The 205 Bastin Road house has been emptied of furnishings. The power has been shut off and the telephone line to that residence has been disconnected. Affidavit of J. Graham Matherne at ¶4, attached as **Exhibit 1**. Accordingly, the 205 Bastin Road house is vacant, unoccupied and no doubt its condition is suffering from the lack of any climate control.

The 205 Bastin Road property has no debt on it and is subject to a judgment lien in favor of the Commissioner-in-Possession.<sup>1</sup> Therefore, the proceeds from the sale of

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<sup>1</sup> On May 27, 2010, a certified copy of the Court's Implementation Order was registered in the Register's Office for Lewis County, Tennessee, being recorded at Book 122, Pages 739-758. **Exhibit 2**. Pursuant to

that property -- and the 205 Bastin Road property (because of the home situated thereon) is the most valuable of all the properties at issue in the Court's May 24, 2010 Implementation Order -- will be used to pay down the \$4.395 million judgment in this action.

Because of the direct interest that the Commissioner-in-Possession has in the sale of the 205 Bastin Road property, and because of the specific concern of the Commissioner-in-Possession that the security and value of the property will be jeopardized if left unoccupied and without climate control, the Commissioner-in-Possession and Sentinel Trust Receiver request expedited consideration of this Motion.

Danny N. Bates has been contacted and request for agreement as to immediate possession by the Commissioner-in-Possession has been made of him. Mr. Bates has stated that he did not want to agree and that the matters concerning possession could be worked out later over the next several weeks. Unfortunately, because of the unoccupied nature of the 205 Bastin Road property, the Commissioner-in-Possession does not feel he or his Receiver can wait that long before taking measures to secure and preserve the premises. Matherne Aff. at ¶5-6.

In requesting expedited consideration of this request for relief, undersigned counsel stand ready to appear before the Court in person, or via telephone, in regard to further argument or to respond to questions or concerns of the Court.

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Rule 69.07 (2) Tenn. R. Civ. P., the registering of that order establishes a judgment lien upon the 205 Bastin Road property in favor of the Commissioner-in-Possession.

## **II. Motion for Order Giving Commissioner-in-Possession Immediate Possession and Control Over 205 Bastin Road Property**

Danny N. Bates has not appealed the Court's May 24, 2010 Final Order, which made final the Court's April 7, 2010 Memorandum and Order and the Court's May 24, 2010 Implementation Order. Through registering of the May 24, 2010 Implementation Order with the Lewis County Registrar's Office, a judgment lien as to the 205 Bastin Road property exists (see Rule 69.07(2) Tenn. R. Civ. P.). And the Commissioner-in-Possession/Sentinel Trust Receiver will be, in the near future, filing a motion, pursuant to Rule 69.07(3) Tenn. R. Civ. P., to order the sale of that and the other properties set forth in the Court's May 24, 2010 Implementation Order.

In the interim, however, significant concern exists regarding the 205 Bastin Road property. Simply put, it is unoccupied and without power. Absent measures that could reasonably be taken by the Commissioner-in-Possession (e.g., changing of locks and implementing other security measures, having climate control operational, etc.), the Commissioner-in-Possession fears that the value of the property -- in whatever state it is presently in -- would be in jeopardy. Moreover, the Commissioner-in-Possession taking possession of the 205 Bastin Road property would facilitate the steps needed in relation to preparing for ultimate sale of that property -- conducting appraisals, showing to agents, etc.

Conversely, allowing the Commissioner-in-Possession to take possession of the 205 Bastin Road property would not cause any injury to Danny N. Bates. He and his wife do not live there and, respectfully, given his not appealing the Court's May 24, 2010 Final Order and given the existing judgment lien on the property, Mr. Bates could not have any reasonable expectation of living there at any point in the future. Mr. Bates

would, of course, be welcome to be present when the Commissioner-in-Possession took possession so as to chronicle the state of the property at the time of such turnover. The Commissioner-in-Possession would also cooperate with Mr. Bates' reasonable requests to access the 205 Bastin Road property until the sale of that property.

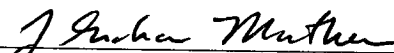
The 205 Bastin Road property is subject to a judgment lien because Mr. Bates has a \$4.395 million judgment against him and because he had fraudulently transferred that property to his wife in hopes of avoiding seizure and sale by the Commissioner-in-Possession (i.e., his creditor). The remedies section of the Tennessee Fraudulent Transfer Act specifically allows:

Appointment of a receiver to take charge of the asset transferred or of other property of the transferee [and] any other relief the circumstances may require.

T.C.A. ¶66-3-308(a)(3)(B)–(C) (brackets added).

Certainly, in addressing the circumstance of the 205 Bastin Road property being unoccupied and without climate control, the Court can, within its equitable powers, recognize and provide the relief available under the very Tennessee statute that allowed the set of aside of the fraudulent conveyance of the 205 Bastin Road property to begin with -- i.e., the Court can, and should, allow the Commissioner-in-Possession to “take charge” of the asset through allowing the Commissioner-in-Possession to take possession of the 205 Bastin Road property so as to take the needed measures to preserve and secure it.

Respectfully submitted,



J. Graham Matherne, BPR 11294

**WYATT, TARRANT & COMBS, LLP**

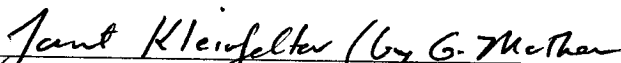
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Counsel for Commissioner-in-Possession of  
Sentinel Trust Company

### CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served upon the following, via U.S. Mail, on this the 25<sup>th</sup> day of June, 2010.

David D. Peluso  
P.O. Box 250  
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Diana M. Thimmig  
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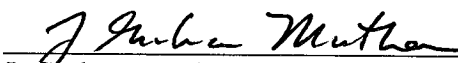
Danny Bates  
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